

# Notice of Allowability

Application No.

09/961,196

Examiner

N. Bhat

Applicant(s)

NEIDLINGER ET AL.

Art Unit

1761

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 11-21-2003.
2. ☒ The allowed claim(s) is/are 1-15, and 17 re-numbered as 1-16 respectively.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**


7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

- |   |   |
|---|---|
| 1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)          |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                 | 6 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. _____  |
| 3 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No. _____ | 7 <input type="checkbox"/> Examiner's Amendment/Comment                             |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material           | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
|   | 9 <input type="checkbox"/> Other  |

  
N. Bhat  
Primary Examiner  
Art Unit: 1761

### DETAILED ACTION

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Jeffrey Wolfson on January 2, 2004.

The application has been amended as follows:

In the claims:

Claim 1, line 10, after "pores and", delete "cool" and insert --cooling--

Claim 15, line 1, delete "16" and insert --13--

Delete claim 16

Claim 17, line 1, delete "16" and insert --13--

Delete Claim 18

2. The following is an examiner's statement of reasons for allowance:

The invention relates to a process and product by process of making an expanded snack food comprising the steps of preparing a mixture comprising in parts by weight, from 5.5 to 27.5 parts of non-fat milk solids, about 2.5 to 12.5 parts of milk fat or vegetable fat or combination thereof, about 50 to 80 parts of amylaceous material, up to 12 parts of sugar, and added water up to a water content from 11% to 19% by weight of the mixture; cooking the mixture at 120 to 170°C under 40 to 60 bar for 5 to 50 seconds; to obtain a thermoplastic mass having a porous texture; injecting compressed nitrogen

into the thermoplastic mass to decrease the size of the pores and cooling the mass before extrusion; and extruding the thermoplastic mass to obtain a snack product.

The closest prior art to applicant's invention is the Aebischer et al. coated sack food product which teaches a finger food snack for toddlers containing 8-16% whole milk solids, 3-5% fat, 35-50% corn or semolina, 30% other cereal, 10% bran and 20-30% starch waxy corn starch being preferred. Extruder cooks the snack product and then a sugar-based slurry is coated onto the snack product. The composition of the snack product is within the range as claimed by applicant but, the snack product has been claimed as a product by process and no where in the Aebischer et al. reference is taught to inject compressed nitrogen into the thermoplastic mass to decrease the size of the pores and cooling the mass before extrusion. The snack product as claimed by applicant includes nitrogen in the snack product as a result of extruding with the nitrogen addition which unexpectedly reduces the pore size of the expanded product and thus the method of making the snack product and the snack product is novel and unobvious from the teachings of the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Roussel et al. teach a food product with a fibrous texture made from whey proteins prepared by extrusion. The process as claimed does not teach

using nitrogen during the extrusion of the snack product. Thulin et al. teaches a shelf-stable multi-textured cookie having visually apparent particulate flavoring ingredients prepared by an extrusion process. Thulin et al. does not teach using nitrogen during extrusion to reduce the pore size of the expanded product. Schwab et al. teach a dried food foam product comprising 5-70% by weight of a foam product and sufficient amounts of an undernaturated proteinaceous-whipping agent sufficient to provide a foam product. Ferrero teaches a method and apparatus for extrusion particularly for extruding masses of food products.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 571-272-1397. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0987.



N. Bhat  
Primary Examiner  
Art Unit 1761